IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.897 OF 2006
IN
SUIT NO.1861 OF 2002

Raishi Shivji. Chheda & Ors. ..Plaintiffs

V/s.

Dhirajlal Raishi Chheda & Ors. ..Defendants

Shri.J.G. Shukla i/b G.H. Shukla for the plaintiffs in support of plaintiffs.

Shri.U.J. Makhija i/b G.S.Bhat for defendant No.1 & 2 to show cause.

CORAM : S.K. SHAH, J.

DATED : 14/09/2006

P.C.:-

1. This chamber summons is taken out seeking amendment of the plaint.

2. I have heard learned counsel on both the sides.

3. So far as proposed amendment in paragraphs No.7.4.6., 15.3, 15.3(corrected as 15.4) are concerned, they are not pressed by the learned counsel for the plaintiffs.

4. As regards proposed amendment in paragraphs No.7.1.1., 7.4.1., 7.4.2., 7.4.4., 7.5.1., 7.5.2.,

7.5.3., 7.6.1., 7.6.2., 7.6.3., 7.7.1., 7.7.3., 7.7.4., 7.7.5., 7.7.6., 7.7.7., 7.8.5., 7.8.6., 7.8.7., 7.13.1., 7.13.2., 7.13.3., 15.1. and 15.2 are concerned, there is no dispute that they have to be allowed and they are, accordingly allowed.

5. As regards proposed amendment in paragraph No.7.4.5 is concerned, it is objected to by the learned counsel for the defendants on the ground that new case is being made out and the admission of the signature which has already been made is being nullified by this amendment. Perusal of the plaint shows that basically what is mentioned in para 7.1 of the plaint is that the first plaintiff does not recollect having signed any such Deed. It is further mentioned that the first defendant appears to have obtained his signature by fraud or forgery. What is tried to be pleaded through amendment in paragraph 7.4.5. is to the effect that the document that was signed was changed and xerox copies of the signature was taken on blank paper and some different writing was made on the blank paper. It is also tried to be pleaded by way of amendment in paragraph No.7.4 of the

plaint that there is mention that first defendant seems to have altered writing without the consent or knowledge of the first plaintiff and got him and some members of his family to sign the said altered writing dated 25/6/1993 fraudulently suppressing from them the fact that the writing was different from the said earlier writings dated 4/2/1992. There is original pleading to the effect that the writing was altered without the consent of the plaintiff. It is contended that by the amendment, plaintiff has tried to bring new additional contentions. I do not think that same can not be allowed. Therefore proposed amendment in paragraph No.7.4.5 is also allowed.

6. As regards proposed amendment in paragraph No.7.7.2., it is objected to by the learned counsel for the defendants that shop No.23 is not subject matter of this suit, but it is the subject matter of proceedings before the City City Court. The suit in the City Civil Court is simplicitor for injunction against plaintiff No.3. Further it appears that subsequently during the pendency of the suit in the City Civil Court prayer for possession was also added. Therefore learned counsel for the defendants submitted

that this amendment should not be allowed. Learned counsel for the plaintiff states that only plaintiff No.3 is a party to the suit and not the other plaintiffs. Further he submitted that in respect of shop No.23, plaintiff No.1 is the original tenant which is an admitted position. He further states that in the counter claim taken out by the defendant No.1, defendant No.1 is claiming shop by way of specific performance by the deed of dissolution dated 31st March, 1996 which is challenged under the suit. Under these circumstances, though there is a separate suit filed in the City Civil Court, by way of counter claim defendant No.1 is claiming right in shop No.23 under the particular document and it is necessary that this amendment should also be allowed. Therefore, amendment sought in paragraph No.7.7.2 is allowed.

7. Learned counsel for the defendants has objected to the proposed amendment in paragraph No.7.7.2 by way of clause (h)-1 with regard to shop No.23. As the amendment in the proposed paragraph No.7.7.2 is allowed, this amendment to clause (h)-1 is also to be allowed.

8. Proposed amendment to the prayer clause(i) is also allowed. Amendment shall be carried out within a period of two weeks. Point of limitation consequent on amendment allowed, shall be open to be contended by the defendants. It is clarified that all the amendments would be on the date of amendment and it will not relate back to the date of filing of the suit. On these amendments being carried out, defendants would be at liberty to carry out consequential amendments in the written statement or file additional written statement limited to the amendment part of the plaint. Matter be kept after six weeks.

. Chamber Summons is disposed of.

(S.K. SHAH, J.)